



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
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CAO 2013/010

April 9, 2013

TO COUNTY ASSESSORS ONLY:

QUESTIONNAIRE
BUNDLED NONTAXABLE SOFTWARE

The assessment of bundled nontaxable software has become an issue for some county assessors. Where a computer or other items of equipment are bundled together with nontaxable software for purchase at a single price, Property Tax Rule 152 allows the county assessor, lacking evidence to the contrary, to simply value the taxable tangible property at its acquisition cost. Under the rule, a taxpayer may also supply sale prices, costs, or other information that will enable the assessor to make an informed judgment concerning the proper value to be ascribed to taxable and nontaxable components of a bundled purchase.

In an attempt to determine whether the assessment of bundled nontaxable software is a statewide issue, we have developed the enclosed questionnaire to solicit information regarding the experiences your office may or may not have had with this type of assessment issue. The questionnaires will be held in confidence, and no data will be attributed to any specific county. Please see the attached questionnaire for further information on the confidentiality of the data supplied. We would appreciate your responses to the questionnaire by May 20, 2013.

If you have questions regarding this project, please contact Sherrie Kinkle at skinkle@boe.ca.gov or at 1-916-274-3363.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk
Enclosure

County: _____

QUESTIONNAIRE BUNDLED NONTAXABLE SOFTWARE

Responses to the following questions from each county will be reviewed, and a summary of the findings will be prepared. *No data will be attributed to any specific county in the summary.* The individual questionnaires will be held confidential, and they are not public documents and will not be open to public inspection pursuant to Revenue and Taxation Code sections 408 and 451, Government Code sections 6254(k) and 15619, Evidence Code section 1040, and Civil Code section 1798.40(h).

Government Code section 15619 prohibits divulgence of information obtained by Board of Equalization employees. Section 15619 provides, in part:

Any member or ex-member of the State Board of Equalization, or any agent employed by it, or the Controller, or ex-Controller, or any person employed by him or her, or any person who has at any time obtained such knowledge from any of the foregoing officers or persons shall not divulge or make known in any manner not provided by law, any of the following items of information concerning the business affairs of companies reporting to the board:

(a) Any information concerning the business affairs of any company that is gained during an examination of its books and accounts or in any other manner, and is not required by law to be reported to the State Board of Equalization....

Accordingly, all data obtained from county assessors in the following questionnaire will be held confidential and will not be made available to other county assessors, taxpayer representatives, or others. The data gathered through this questionnaire process will be used in the compilation of data for the analysis of the issues surrounding the exclusion of bundled nontaxable software from assessment. When Board staff provides results of their analysis of the data provided, the data will be masked and/or arranged in a manner that will preclude identification of the source of any specific data.

We use the term "bundled nontaxable software" when referring to situations where both taxable property and nontaxable software have sold or leased at a single price. Revenue and Taxation Code sections 995 and 995.2 essentially provide that all computer software, except basic operational programs, is exempt from property taxation. Where a computer or other item of equipment is sold or leased at a single price not segregated between taxable property and nontaxable software programs, Property Tax Rule 152 allows the county assessor, lacking evidence to the contrary, to regard the total amount charged as indicative of the value of the taxable property. Conversely, under the rule the taxpayer can supply sale prices, cost, or other information that will enable the assessor to make an informed judgment concerning the proper value to be ascribed to nontaxable components of the equipment that have been bundled into the single sale or lease price.

Please note that the term *appeals board* refers to both a County Board of Supervisors sitting as a Board of Equalization, and an appointed County Assessment Appeals Board.

The following questions were developed to solicit specific information concerning assessment issues your office may have been experiencing with nontaxable software that is bundled into a single sale or lease price with taxable property.

Questions

1. Have adjustments been made to remove bundled nontaxable software from the value of machinery and equipment (i.e., adjustments to trade level, etc.) in your county?

- ☐ Yes. If yes, please provide responses to questions 2 through 9.
- ☐ No. If no, please provide responses to questions 8 and 9.

2. How did you become aware that an adjustment was necessary?

- ☐ Taxpayer Notified the Assessor before Business Property Statement was Filed
- ☐ Business Property Statement
- ☐ Property Tax Audit
- ☐ Assessment Appeal Filed
- ☐ Other (Please Explain) _____

3. What type of documentation was used to support the adjustment (mark all that apply)?

- ☐ Study conducted or data collected by your office.
- ☐ Study or data provided by a taxpayer.
- ☐ Invoice
- ☐ Manufacturer or vendor provided a breakdown in costs concerning one or more of the following: hardware, basic operational software, operational software, and/or application software.
- ☐ Other (Please Explain) _____

Please provide us with a copy of the documentation.

4. How was the adjustment calculated (mark all that apply)?

☐ Percentage of the total cost of the equipment? If this adjustment was used, please describe the equipment and identify the percentage used: _____

☐ Cost on invoice?

☐ Cost based on breakdown provided by manufacturer or vendor?

☐ Other (Please Describe) _____

5. Please complete the following table with respect to the number of assessment appeals filed in your county due to bundled nontaxable software.

Year	2012-13	2011-12	2010-11	2009-10	2008-09	2007-08
Appeals Filed						

Outcome/Status of Appeal

Pending/Unresolved						
Withdrawn						
Stipulated						
Hearings Before the Appeals Board*						

Outcome of Hearings Before the Appeals Board

Assessments Reduced						
Assessments Upheld						
Assessments Increased						

* Please provide copies of evidence presented by the applicant and/or the county assessor at the hearings.

6. Use the following table to identify the type of industry where adjustments were made to remove bundled nontaxable software (BNTS) from the value of machinery and equipment. If available, include adjustment information, year of adjustment, and source used to identify the necessary adjustment.

No.	Industry	Total Assessed Value	Adjustment to Remove BNTS	Net Assessed Value	Year ¹	Source ²
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

If additional space is needed, please copy this page of the questionnaire.

¹ Use the following codes to identify the roll year: **A** for 2012-2013; **B** for 2011-2012; **C** for 2010-2011; **D** for 2009-2010; **E** for 2008-09; and **F** for 2007-08.

² Use the following codes to identify the source: **1** for Business Property Statement; **2** for Property Tax Audit; **3** for Assessment Appeals Withdrawn; **4** for Assessment Appeals Stipulated; **5** for Assessment Appeals Hearings with Board Reduced Values; and **6** for all Other (if "other," please complete the following table).

Source: Other

No.	Description of "Other" Source

7. Please indicate the number of cases concerning appeals of assessments in which the valuation of bundled nontaxable software, embedded software, Revenue and Taxation Code sections 995 or 995.2, or Property Tax Rule 152 have been an issue since January 1, 2007.

☐

No appeals have been filed with the appeals board.

Number of decisions that have been reached by the appeals board. Please provide copies of each decision.

Number of taxpayers who have filed for a refund. Please provide copies of each filing. For each appeal, please provide the evidence presented by the taxpayer and assessor.

Number of settlements that have been reached after the filing of a claim for refund.

_____ Number of cases that have been filed by the county or taxpayers in Superior Court challenging the valuation decision by an appeals board. Please provide copies of the complaint, answer, and evidence presented by the taxpayer and/or assessor and any decision by the Superior Court.

_____ Number of appeals of any decision of the Superior Court. Please provide copies of all documents filed with the court of appeal.

☐ Other (Please Explain) _____

8. When conducting audits, have you found that taxpayers reported less than full cost of equipment due to bundled nontaxable software?

☐ No

☐ Yes

If yes, how many instances were discovered in the last four years? _____

If yes, did they have evidence to substantiate their adjustment? ☐ Yes ☐ No

If yes, please provide us with a copy.

9. Have you received information/evidence from taxpayers requesting that bundled nontaxable software be excluded from an assessment that you did not accept?

☐ No

☐ Yes

If yes, please identify the taxpayer's documentation submitted as support for an adjustment and provide us with a copy of the information.

☐ Study or data provided by a taxpayer.

☐ Invoice

☐ Manufacturer or vendor provided a breakdown in costs concerning one or more of the following: hardware, basic operational software, operational software, and/or application software.

☐ Other (Please Explain) _____

PLEASE RETURN THE COMPLETED QUESTIONNAIRE BY **MAY 20, 2013** TO:

Sherrie Kinkle
skinkle@boe.ca.gov

Questionnaire completed by:

NAME: _____

COUNTY: _____

EMAIL: _____

TELEPHONE: _____